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LEGAL TRAINING FOR SOCIAL WORKERS

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LEGAL TRAINING FOR SOCIAL WORKERS

BY HARRY J. McCLEAN¹

The purpose of this paper is to call attention to an element in the training of the social worker, which has hitherto been largely neglected, namely, legal training. This discussion endeavors to indicate, as clearly as may be done in a brief paper, the character and extent of such training, and its value to the social worker.

It will be necessary, first, to determine who are social workers within the meaning of the term as herein employed. Dr. Edward T. Devine has included in this class "every man or woman who, in any relation of life, professional, industrial, political, educational, or domestic; whether on salary or as a volunteer; whether on his own individual account or as a part of an organized movement, is working consciously, according to his light intelligently, and according to his strength persistently, for the promotion of the common welfare—the common welfare as distinct from that of a party or a class or a sect or a business interest or a particular institution or a family or an individual."²

Clearly, this classification is very inclusive, but for that reason none the less sound. It includes social workers who are presumed to have had legal training, such as judges, prosecutors, and public defenders. It includes others whose work is of such a nature as to make a knowledge of law almost a prerequisite to the proper performance of their duty, such as police and peace officers, probation officers, secret service men, and inspectors. The classification includes still others whose work is of such a character as to make a knowledge of law a valuable asset in the doing of their work—such as public health nurses, volunteer helpers, and field workers.

¹ [Editor's Note] Lecturer in Sociology, University of Southern California.

² Devine, *Spirit of Social Work*, p. 7.

In general, workers of the first class (judges, prosecutors, and public defenders) are presumed to have a sufficiently thorough knowledge of the law; their need is for training in sociology, in the social sciences. To this particular class, this paper has no application.

The workers of the second class (police officers, probation officers, et al.) should have a more thorough training in both law and the social sciences. A police officer in the average American city is selected not for his knowledge of the laws he is to enforce, nor for his understanding of basic principles of sociology, but rather for his physical power and fighting courage.

The workers of the third general group (and it is not urged that all social workers can be grouped into these three divisions precisely) are presumed to have a thorough knowledge of the social sciences; their training, it will be contended, should include some study of the law.

Character and Extent of Legal Training Recommended.—

Manifestly, it is impossible to state, within the limits of this paper, the substantive law (the law of duties and rights) a knowledge of which would be of value to social workers. It will be possible to indicate in a general way only what this knowledge of the substantive law should embrace. A knowledge of the adjective law (the law of pleading and procedure) would be interesting from the standpoint of study, and perhaps valuable in a few cases, but I do not believe that the legal training of social workers need include the adjective law. To what extent, then, should training in the substantive law be carried?

Contracts.—An elementary knowledge of the law of contracts would be very useful to the social worker. The people among whom the social worker labors are frequently parties to some kind of a contract; it may be for services, for the purchase of household goods, for necessities, and so forth. Knowledge of contract law should cover, it is suggested, at least the following points: (1) who are parties competent to make a binding contract; (2) what constitutes the essentials of offer and acceptance in the formation of a binding contract; (3) what is sufficient consideration to support a contract; (4) what contracts are absolutely binding, what

are voidable, and what are always void; (5) what contracts must be in writing. I would not have it inferred that these five points cover or include all the essentials of contract law; there is here indicated only what I deem the more essential points a knowledge of which the social worker should have. The worker should have such knowledge as to be able to draw a simple contract, and to inform a person in a general way of his rights under a contract into which he has already entered.

Law of Torts.—Another branch of the law recommended for study is that of tort. A tort may be defined as a civil wrong done to one's person or property for which damages may be recovered. The beneficiaries of social service are very frequently the victims or the perpetrators of a tort. It may be trespass to person as when one person strikes another in a fit of anger. It may be trespass to property, as when one injures the property of another by the application of force. Or, it may be an injury suffered through another's negligent act. The study of tort law should include the following points: (1) elements of tort liability, the responsibility element, the damage element or the nature of the harm sustained, and the excuse element; (2) what is essential in the torts of assault and battery; (3) what is essential to trespass to property; (4) what persons are liable for their torts; (5) what will excuse a tort; (6) what standard or degree of care is required of different persons in their association together; (7) when will negligence ground an action and contributory negligence defeat an action in tort; (8) what is the essential element in the conversion of property. With this knowledge of tort law, the worker would be able to advise in the ordinary everyday difficulty.

Real Property.—The study of real property is important because of the many questions arising between landlord and tenant, and mortgagor and mortgagee. The study need not be pursued into the involved and technical phases, but should cover such considerations as: (1) what are the different ways in which real estate may be held; (2) what is community property and what is separate property, who has control over each and to what extent; (3) what is included under the term real estate; (4) under what conditions is rent payable; (5) who is obliged to make repairs, who may repair, and to what extent; (6) how may land be trans-

ferred; (7) what are the requisites of a valid deed of conveyance; (8) what is a mortgage, and what are the rights and remedies of the mortgagor and mortgagee.

Insurance Law.—Insurance law is important because of the great number of industrial workers who carry some form of insurance. Industrial insurance represents a new and growing field. The insurance corporations have adapted a policy to the ability of the workman to pay. It would be useful to the social worker to know (1) the essential elements of a valid insurance policy; (2) the rights and remedies of the insured under the particular policy; (3) the events or contingencies which may be insured against; (4) the amount which may be recovered in case of loss; (5) the notice and proof necessary in case of loss, and when this must be made.

Damages.—In the great majority of cases, the injured person wants money for damages. It might appease the anger to have the wrong-doer otherwise punished, but generally money will satisfy. For this reason, therefore, that gold is so acceptable to the average individual who has suffered injury, the law of damages is important. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money.¹ But it is important to know when the element of legal detriment is present. There are a great many cases in which the injured party has an action for damages: injury to the person, injury to property, loss of services, etc. Further, it is necessary to know the measure of damages, or approximately what may be recovered. In many cases the amount recoverable, assuming the solvency of the defendant, would be less than the disadvantage accruing from the action. Thus if the measure of damages for the breach of a contract would be twenty-five dollars and by bringing the action the plaintiff would lose credit or business of greater value to him, the advice should be to ignore the breach of the contract. Legal advice should always be supported by common sense and business acumen.

Criminal Law.—It is clearly important for every social worker to have a knowledge of criminal law. The same should extend to

¹ California Civil Code, Section 3281.

the crimes punishable in the particular state. In some states, the cognizable crimes are those known to the common law of England. In the state of California, there are no common law crimes, so-called; all of the cognizable crimes are declared in the Penal Code of the state. Therefore, in California and in other states following the same system, the social worker should know the provisions of the penal code.

Domestic Relations.—The law of domestic relations is the law of the home, and for this reason it is clearly a valuable study. Perhaps knowledge of domestic relations law could be used more frequently and to greater effect than that of any other one branch of the law. The subject relates to marriage, divorce, the mutual obligations of husband and wife, of parent and child, of guardian and ward. The welfare worker should know the law on these several points in order to advise properly in a given case.

Equity.—Equity is a system of jurisprudence administered in equity courts, the object of which is to supply the deficiencies of the courts of law, and to render the administration of justice more complete by affording relief where the law courts are incompetent to give it. Equity is sometimes called the law of natural justice. Equity would make a valuable study at least to the extent of the general principles, the maxims recognized in equity, equitable estoppel (that which prevents a man from alleging or denying a fact in consequence of his own previous statement or conduct), the grounds for equitable relief, and the remedies which are to be had in equity courts. The whole subject is interesting, but the points not here suggested are of such a nature as not to be generally useful in social work. At one time, the distinction between common law principles and equity jurisprudence was very marked. The common law courts and the equity courts were separate and distinct. In some states this distinction still prevails, while in others it is either unimportant or entirely abolished. But even in states where the distinction between law and equity is no longer made, knowledge of equity jurisprudence is important.

Evidence.—I believe that every social worker should have a thorough knowledge of the law of evidence. To assist in law enforcement, it is necessary for the worker to understand the rules of evidence. "Judicial evidence is the means, sanctioned by law,

of ascertaining in a judicial proceeding the truth respecting a question of fact."¹ But what means of ascertaining the truth are sanctioned by law? These the social worker should know. Moreover, he should know the relative value of the several means. In the conduct of a given inquiry, certain facts are relevant; some are relevant but not admissible. Admissions, confessions and declarations are important in the determination of a given fact; a worker should know how and when to make use of the same. Most people enjoy "hearsay" evidence, but as a general rule the judge does not care to hear it. There are exceptions, however, such as "dying declarations," which are received.

It is important to know the different kinds of evidence, and when each kind is properly used. The competency of witnesses is important, also. There are witnesses whose testimony the judge is bound to reject in whole or in part; the worker should know what witnesses are incompetent, as a matter of law, to give testimony.

General Laws.—A discussion of the extent of legal training would be incomplete without reference to the general laws which are enacted in behalf of the people among whom the social worker labors. The value of a knowledge of these laws is emphasized by the fact that these so-called social laws are enacted to relieve the conditions against which the social worker struggles in behalf of others. Every welfare worker should have a thorough knowledge of the general laws, the "social laws," in force in his particular community.

He should understand the place of social legislation in a program for social advance. He should be familiar not only with the history of social and economic conditions out of which grew a demand for social legislation, but also with the history and present status of specific social laws in his own city and state and in the nation. This specific legislation may be classified under at least seven headings: (1) regarding men in industry, such as employers' liability and workmen's compensation laws, sickness and old age insurance laws; (2) regarding women in industry, including eight-hour laws, minimum wage legislation; (3) child welfare

¹ California Civil Code, Section 1823.

legislation, such as child labor laws, the juvenile court laws, provisions protecting the child's morals; (4) relating to the family relationship, i. e., marriage and divorce laws; (5) relating to public morals, such as laws regulating amusements, red light abatement laws; (6) relating to immigration; (7) relating to public health, e. g., laws providing for the registration of vital statistics, housing and sanitation laws, legislation relating to pure foods and drugs.

In addition to a knowledge of these and other fields of social legislation, the social worker should know something of the mechanics of legislation, such as the collecting of statistics as a basis for securing legislation, the drawing up of a bill, the process of securing enactment.¹

I would not have it inferred that the extent of the legal knowledge here suggested is considered absolute. I have given what I consider reasonably essential. There are other branches of legal knowledge which might prove to be helpful in given cases, but which would, perhaps, not be generally useful. Howbeit, the extent of the training does not go to the essence of the discussion.

The question naturally arises as to the length of time necessary to acquire the training suggested. The time required would depend upon several considerations: the aptness of the student; the system of study followed, whether case or text book; whether it is acquired by private reading or in the law school. I believe, however, that the study suggested could be completed by the average student in a law school using the text book system in one academic year.

Arguments Against the Proposed Legal Training.—I. It might be argued that social workers cannot afford the time and money necessary to acquire legal training. No doubt the time and expense element is conclusive argument against the plan for some workers. There is no way to refute the argument in the individual case. If a worker has neither the time to spend in study nor money with which to secure books and instruction, legal training for that particular worker is clearly impracticable. Knowledge of

¹ Editor's note. This and the preceding paragraph is essentially a summary of the course in Social Legislation as given by Mr. McClean at the University of Southern California.

law comes only through long hours of study, and, like other professional training, it involves some outlay in money.

But a system cannot be condemned by its application in the individual case. Our system of large-scale production would be a complete failure judged from the standpoint of the itinerant shoe cobbler. The soundness of any system is determined by its general effect. If in an individual case, legal training would be impracticable, or impossible, but in the great majority of cases it would promote greater efficiency, the effect in the greater number of cases must control. Whether the increased efficiency reasonably certain to follow will justify the time and expenditure necessary, the individual worker must decide.

II. It might be urged, further, that the giving of information as to rights by social workers would provoke more litigation, and thus increase the great congestion in our court calendar. But the effect feared would be conclusive proof of the value of the training. The American idea means justice to all, even to the most lowly in the economic scale. If a person has rights under the law, and he can secure those rights only by litigation, it is only American justice that he be permitted to resort to the courts. If the court calendar becomes crowded, then let us have more courts. If we have the means to prepare against an invasion of our rights from without, we should have the means to secure our rights against injury from within. If more litigation results from legal training of the social worker, this is proof that the worker is doing more efficient work by helping others to secure their just rights.

III. Again, it may be argued that the training should not be so broad as to include law, that this is the day of specialization. This argument of specialization is more or less sound, but it must be received in the light of all the facts. If sufficient funds were available so that specialists in each particular line could be employed for work among the deserving, the argument would have considerable weight. But manifestly, this ideal condition of affairs cannot soon prevail. Therefore, the training must include certain phases of work in the several professions.

IV. Finally, it might be argued in some communities that there is the Public Defender whose duty it is to give legal advice to those unable to secure private counsel. One answer to this argument is

that comparatively few of the people know of the Public Defender's office. A prominent social expert in the employ of the County of Los Angeles stated that very few of the persons served by social workers know of the Public Defender's office, but that the number is increasing. One field worker in Los Angeles County estimates that no more than one-fourth of those among whom she works know of the Public Defender. Clearly, this office cannot serve people who do not know of its work. But let us resolve every doubt in favor of the argument and assume that every person knows of the Public Defender. Then first, in a great many cases, through timidity or otherwise, the persons in need of legal advice would not call at the Defender's office; they would surrender their rights rather than seek such counsel. This is a general characteristic of this class of people. Again, assuming that those in need of legal services would freely consult the Defender, it would be necessary to increase the number of deputies in the Defender's office, while the same advice could ordinarily be given by the field worker. The social worker in the field would be an assistant to the Public Defender's office.

Arguments for Legal Training.—Before considering the arguments which can be urged in favor of the plan, it is necessary, first, to understand clearly the function of the social worker. The function of the social worker is to promote the general welfare of the state. I grant that "the general welfare" is rather an abstract term, but it has been used for so long and has been discussed so much that the abstraction is no longer beclouded in meaning. Social service is rendered by the state, at present, on the theory that work in behalf of the weaker members of society will strengthen the whole, will advance the general welfare. The State of California does not pay Miss ——— to administer to the ——— family merely because the people, acting through the State, feel sorry for the children, or think that the father deserves assistance. The people, organized into a state, reason that unless assistance is rendered in the given case now, the state will be made weaker as a result of those conditions. The state has always rendered assistance out of self-defence, and not on any other theory. Whether this is the correct theory is not in issue. The same theory is generally followed by business entities which employ welfare workers

in behalf of their employees. It pays, it promotes the general welfare of the business. Likewise with the state, by employing social workers the general welfare is advanced.

This function of the social worker being understood, the next consideration is as to the purpose of law. There must be some connection between the function of the worker and the purpose of the law, which he is urged to know, in order that such knowledge be valuable to him. The ultimate purpose of law is to promote the general welfare. We enact laws for the common good. We have a Workmen's Compensation Law, not to cast a burden upon capital, nor to create new business for the insurance companies, but solely for the common welfare of the state. The Statute of Frauds promotes the general welfare by making the practice of fraud difficult. No one will gainsay this ultimate purpose of law.

The function of the social worker and the purpose of the law is the same, the promotion of the common good. The function of the worker is discharged through personal service; the purpose of law is fulfilled by defining rights and providing remedies. Thus there is a very vital connection between the task performed by the worker and the law he is urged to know. In a very definite sense, the success of the one is dependent upon the other, neither one alone is sufficient. Law without the social worker would be nil; social workers without law would be helpless.

Since there is a very vital connection between the function of the social worker and law, it is submitted that a knowledge of law will equip the social worker for more efficient service. Social work is rapidly becoming a distinct profession; there are schools of philanthropy as well as of law and medicine. And the goal toward which the professional man strives is greater skill and efficiency. For this reason, adequate and proper training must equip the worker for the highest degree of skill and the greatest efficiency. Wherein, then, will a knowledge of law make possible a greater efficiency in social work?

I. There is a relation of confidence and sympathy existing between the social worker and the people, and for this reason the worker is in a good position to give legal advice. He will be told

all of the facts under which the injury was inflicted, and upon which the legal right depends. This would not be true of anyone else to whom these persons might go for legal service. "They come to us first, when troubles and disputes arise in business," says one worker. Since the worker holds such an advantageous position from the standpoint of giving legal advice, and since the people seek such advice, it would seem that the social worker ought to be prepared to give it.

II. It is the duty of the social service worker to defend the weak against oppression by the strong. Unfortunately, there are some who will take advantage of another's weakness and misfortune. There are avaricious men and women who will have their rent, their interest money, their foreclosure action even amid scenes of distress. There are those who think that their might measures their right. Witness the mighty landlord putting the faithful, fearing tenant into the street without proper notice to quit. Witness the crafty vender binding the honest though unlearned foreigner by a contract drawn in the vender's own favor. Many cases could be cited to show wherein those for whom the social worker labors are made the victims of oppression. It is to prevent this injustice that the worker goes into the field. To defend the weak successfully, it is necessary to invoke the protection of the law. To do this, it is first necessary to know what the protection is, and how it can be secured.

III. The social worker is an agent of the state. It is the duty of the agent to protect the interests of his principal. As before indicated, social work is carried on by the state for its own good primarily; the direct benefit to the individual *per se* is only incidental. The worker must always keep this fact in mind to the end that he may safeguard the vital interests of the state.

No one will seriously deny that it is for the common good to have law enforced and order maintained. Without law and order there would be no state; there would be only anarchy. The first step in law enforcement is the detecting of and reporting of violation. Without this, the machinery of enforcement cannot move. Who is in a better position to detect violation than the social worker who has a knowledge of the law? The worker labors among a certain class of people who, largely through ignorance, partly

through malice, violate the law. One worker in Los Angeles County reports 500 violations in one month—a list which relates only to his particular field. Let it not be inferred that this particular class of people are less law-abiding than others. I simply desire to point out the fact that there are infractions of the law by such people, which the properly trained worker could usually detect.

The violation of law would be reported to the District Attorney, or to the City Prosecutor, according to the nature of the offense. Then it would be incumbent upon the prosecutor to start the proper proceeding. This would fully advise the prosecutor and disenable him to excuse his failure to prosecute friends or foes through ignorance of violation.

But the welfare worker could do more than merely report violations; he could assist in the gathering of evidence against the party accused. Frequently the guilty escape to prey further upon society because the prosecution for one reason or another cannot produce sufficient evidence to convict. If the worker had a knowledge of the rules of evidence he could render invaluable assistance in the gathering of evidence and in the securing of competent witnesses. Knowing the people so intimately, the worker could advise as to the truthfulness, the prejudices, the idiosyncrasies of those who are called as witnesses, and the value of these facts to the prosecutor in the conduct of a trial is self-evident. Substantially the same assistance could be given to the Public Defender.

IV. The worker with legal knowledge is able to invoke the protection of many of the social laws, so-called, without the assistance of any other official. The California Juvenile Court Law can be taken advantage of by any one filing a petition with the clerk of the Superior Court alleging certain facts which give the Court jurisdiction in juvenile cases. A worker could file this petition if he had knowledge of the provisions of the law. The same is true of the State Pure Food Law, and others. These fundamental measures are for the protection of society, but the protection is contingent upon the application of the law in the proper case. The social worker is in a position to make the application.

V. There is heard on all sides the compelling cry for social justice. Mr. Frank Tucker of New York has well said: "And

what is social justice but community life maintained in equilibrium by rules of conduct called law." It may be that these rules of conduct are dictated by the silent, powerful voice of public opinion alone; and of these, when so dictated, the efficient social worker has knowledge. But they may be dictated, also, by the legislative power of the state, and when so prescribed, the worker has no understanding knowledge of the same in the absence of legal training.

It is rather strange that the professional training schools for social service workers have hitherto not offered a single course in elementary law (as far as a perusal of bulletins indicates). It would seem that the professional training school would be one of the first agencies to recognize the need, and to encourage the future worker to become grounded in some of the elements of law. Since this paper was drafted, it has been pleasing to note that the Chicago School of Civics and Philanthropy announces for the spring term in 1917 a course entitled "The Law and the Courts in Relation to Social Work," in which "the fundamental principles of law and procedure, evidence, domestic relations, criminal law, etc." are to be stressed. This course, while meeting only twice a week for eleven weeks, is an excellent indication.¹

Arguments have been offered against and in support of a certain legal training for those engaged in social service. As to the weight and sufficiency of the evidence offered, the reader can judge for himself. It is submitted that, upon the facts, a limited, well selected legal training would be valuable for social workers.

¹ It is interesting to note that in explaining the introduction of this course in elementary law, the Chicago School of Civics and Philanthropy (see bulletin, 1916-1917) says: "As legal knowledge is a most important factor in solving many of the problems of the social worker, the School has thought it advisable to provide the students with this opportunity of becoming familiar with some of those fundamental facts with regard to the law and the courts that are of chief importance in the work carried on by social and charitable agencies." In line with this thought, it may be stated that a leading social worker of Los Angeles reports that his legal knowledge has been by far the most useful part of his training for social service.

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